IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4716 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE A.S.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NEW INDIA ASSURANCE CO.LTD.
Versus
SMT. KIRAN JAYESH RASTEY & others

==========

Appearance :

Mr. Ajay Mehta for Mr. Rajni H. Mehta for the appellant
MR JV JAPEE for respondent Nos. 1 to 3

==========

CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE A.S.DAVE

Date : 30/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1.The appellant-New India Assurance Company Limited challenges the order dated 11.6.2001 passed by the MACT, Kachchh at Gandhidham, below application Exh.6 in MACP No.1481 of 1999, by which, the application filed by opponent Nos. 1 to 3-original claimants under Section 163 A of the Motor Vehicles act, 1988, to receive compensation on structured formula basis came to be partly allowed and, thereby, the original claimants have been awarded compensation of Rs.4,62,834/- with running interest at the rate of 12% per annum from the date of application till realization and, accordingly, the appellant and respondent Nos. 3 and 4, driver and owner, were directed to pay the said amount.

2.The above appeal came to be admitted by a Division Bench of this Court vide order dated 21.12.2001.

3.Today, when the appeal is placed for final

hearing before us, Mr. Ajay Mehta, learned advocate for the appellant and Mr. J.V. Japee, learned advocate for the original claimants have jointly submitted that the impugned order may be quashed and set aside in view of the fact that the original claimants want to prosecute the main claim petition being MACP No.1481 of 1999 under Section 166 of the Act on its own merits and in accordance with law.

4.Mr. Ajay Mehta, learned advocate for the appellant has drawn the attention of the Court to the judgment of the Apex Court in the case of Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala and others, reported in 2001 ACJ 827 wherein it is held that compensation payable under Section 163-A of the Act as per structured formula is not in addition to the determination of compensation on the principle of fault liability under Section 168 and it is alternative to that. He has further drawn the attention of the Court to the judgment of the Apex Court in the case of D.G. Soni vs. United Insurance Company Limited, reported in 2004 (2) GLR 1597, wherein, the Apex Court has affirmed the view taken in Hansrajbhai V. Kodala (supra). He has submitted that, in view of the above settled law, the

claimant must opt/select to go either for a proceeding under Section 163A or under Section 166 of the Act, but not under both.

5.We have considered the joint submission made by learned advocates for the parties. We have also perused the impugned order and the decisions cited at the Bar. Applying the principles laid down by the Supreme Court in the case of Oriental Insurance Company Limited (supra) and in the case of D.G. Soni (supra), there is no manner of doubt that the claimants must opt/select to go either for a proceeding either under Section 163A or under Section 166 of the Act, but not under both. Therefore, the claimants cannot file two parallel proceedings one under Section 163 of the Act and another under Section 166 of the Act. In the instant case, the claimants want to prosecute the main claim petition being MACP No.1481 of 1999 under Section 166 of the Act and, since a consensus has been arrived at between the parties to quash the impugned order dated 11.6.2001, the said order deserves to be quashed and set aside by allowing this appeal.

6.For the foregoing reasons, the appeal succeeds and, accordingly, is allowed with no order as

to costs. The order dated 11.6.2001 passed by the MACT, Kachchh, at Gandhidham, below application Exh.6 in MACP No.148 of 1999, is quashed and set aside. The MACT, Kachchh, at Gandhidham, is directed to proceed with the hearing of MACP No.148 of 1999, which is pending on its file as expeditiously as possible having regard to the exigency of his file. The Registry is directed to refund Rs.25,000/- deposited by the appellant at the time of filing of this appeal as per the statutory requirement under Section 173 of the Act to the appellant on due verification.

[A.M. Kapadia, J.]

[Anant S.Dave, J.]

(swamy)